

**Bureau of Land Management  
Winnemucca District Office  
HRFO (W010)**

**Categorical Exclusion**

**CX#: DOI-BLM-NV-W010-2012-0051-CX**

**Date: 6/11/2012**

Lease / Case File / Serial #: N-91071

Regulatory Authority (CFR or Law): CFR 2800

BLM Manual: 2800

Subject Function Code: 2800

Is the project located within a Preliminary Priority Habitat? ☐ Yes ☒ No

Is the project located within a Preliminary General Priority Habitat? ☐ Yes ☒ No

Is the project located within a National Landscape Conservation System feature (NCA, Wilderness, WSA, ISA, Scenic or Historic Trails)? ☐ Yes ☒ No

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1. BLM District Office: Winnemucca District Office

2. Name of Project Lead: Debbie Dunham

3. Project Title: Clean Energy Rail Center ROW

4. Applicant: Clean Energy Rail Center LLC

5. Project Description: (briefly describe who, what, when, where, why, how)

Clean Energy Rail Center LLC is requesting a 30 year right-of-way (ROW) to use current existing roads over BLM lands to get to their private property. They would use the roads year round, "as is." There would be two-way traffic flow on the roads. No construction is required in connection with this request.

The road ROW is the only practical access to the subject property since most of the property is land locked, as a result of the "checkerboard" configuration of BLM land ownership along the transcontinental railroad, which runs through the subject property. The existing roads are currently being used by Gradient Resources, Inc., the geothermal developer for the project, and also by Kinder Morgan, which has a pipeline that runs through the property. CERC LLC has the consent of both of these users to be a co-user of these roads.

Project dimensions (length, width, height, depth): sec. 10 – 3,590.40 feet long X 20 feet wide; sec. 14 – 3696 feet long X 20 feet wide; sec. 22 – 5808 feet long X 20 feet wide.

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Total Acres: 6.01

BLM Acres: 6.01

Would the project result in new surface disturbance? ☐ Yes ☒ No

Has the project area been previously disturbed? ☒ Yes ☐ No ☐ N/A

If yes, what percent of the project area has been disturbed? 100% . If only part of the project area has been disturbed, indicate disturbed area on map. Describe disturbance (and attach photo of disturbed area if you have one):

6. Legal Description: T. 20 N., R. 26 E., sec. 10, S2SWSW;  
T. 20 N., R. 26 E., sec. 14, SWSWNW; SWNWSW; W2SESW;  
T. 20 N., R. 26 E., sec. 22, SESESESE.

USGS 24k Quad name: HAZEN, NV

100k map name: RENO, NV

Land Status: ☒ BLM ☐ Private ☐ Other\_\_\_\_\_.

**Part I: Plan Conformance Review**

The Proposed Action is subject to the:

- ☐ Paradise-Denio Management Framework Plan
- ☒ Sonoma-Gerlach Management Framework Plan
- ☐ Black Rock Desert-High Rock Canyon Emigrant Trails NCA and Associated Wilderness and Other Contiguous Lands in Nevada RMP

The proposed action is in conformance with the applicable Land Use Plan (LUP) because it is specifically provided for in the following LUP decision(s):

Objective L-4, to provide lands for rights-of-ways on or across public lands.

The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decision(s) (objectives, terms, and conditions):

**Part II: NEPA Review**

Categorical Exclusion Review: This Proposed Action qualifies as a categorical exclusion under:

- ☐ 43 CFR 46.210 DOI Implementation of NEPA of 1969, Listing of Departmental Categorical Exclusions (*formerly 516 DM2 Appendix 1*)
- ☒ 516 DM 11.9, (BLM) E. 16. Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

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**ESA and BLM Sensitive Status Species**

<b>Evaluation Criteria</b>	<b>Yes</b>	<b>No</b>
1. Are species listed under the Endangered Species Act likely to occur in the project area? If yes, list the species in Table 1 below. Verify with USFWS or use approved list.	<input type="checkbox"/>	<input type="checkbox"/>
2. Are BLM NV Sensitive Species, based upon the current IM, likely to occur in the project area? If yes, list the species in the Table 1 below.	<input type="checkbox"/>	<input type="checkbox"/>
3. Could the proposed action result in “take” under the Migratory Bird Treaty Act? If yes, attach appropriate mitigation measures.	<input type="checkbox"/>	<input type="checkbox"/>

**Table 1. Special Status Species that may occur in the project area:**

<b>ESA</b>	<b>BLM</b>	<b>Common (<i>Scientific</i>) Name</b>	<b>May Be Affected?</b>	<b>Mitigation for BLM Sensitive Species (Attach ESA Section 7 Compliance to Form)</b>
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	

**Table 2 Migratory Bird Treaty Act Consideration**

<b>Potential MBTA Species w/in the Project Area Common (<i>Scientific</i>) Name</b>	<b>May Be Affected?</b>	<b>Recommended Mitigation</b>
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

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	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	

*Mitigation Measures/Remarks: "See Attached"*

The Proposed Action has been reviewed to determine if any exceptions described in 43 CFR 46.215 Categorical Exclusions: Extraordinary Circumstances apply. (See attached page)

### **Part III: DECISION:**

I have reviewed this plan conformance and NEPA compliance record and have determined that the proposed project is in conformance with the approved land use plan and that no other environmental analysis is required.

☒ Project authorization is subject to mitigation measures identified above. (This is a NEPA Decision. A separate program implementation decision is necessary.)

☐ Based on regulatory authority or law that allows BLM to take action, it is my decision to allow for implementation of the project, as described, with the mitigation measures identified above and attached as stipulations, conditions of approval, terms of conditions, etc. This is a combined NEPA and program implementation decision.

Authorized Official \s\ Ken Loda, Acting Field Manager, HRFO Date: September 26, 2012  
(Signature)

#### **Administrative Review or Appeal Opportunities**

A person who wishes to appeal to the Interior Board of Land Appeals must do so under 43 CFR 4.411 and must file in the office of the officer who made the decision (not the board), in writing to Michael Truden, Humboldt River Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. A person served with the decision being appealed must transmit the notice of appeal in time to be filed in the office where it is required to be filed within thirty (30) days after the date of service.

The notice of appeal must give the serial number or other identification of the case and may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make. Form 1842-1 provides additional information regarding filing an appeal.

No extension of time would be granted for filing a notice of appeal. If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal would not be considered and the case would be closed by the officer from whose decision the appeal is taken. If the appeal is filed during the grace period provided in §4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal would not be considered and the appeal would be dismissed by the Board.

The appellant shall serve a copy of the notice of appeal and any statements of reason, written arguments, or briefs under §4.413 on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor, Pacific Southwest Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890. Service must be accompanied by personally serving a copy to the party or by sending the document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

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In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or would be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).